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## FISCAL IMPACT REPORT

SPONSOR Smith DATE TYPED 2/2/04 HB \_\_\_\_\_

SHORT TITLE Electronic Government Act SB 314

ANALYST Paz

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$50.0			Non-recurring	General Fund
			See Narrative	Recurring	OSF

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	\$3,000.0 - \$7,000.0		Recurring	New Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates House Bill 291

Responses Received From  
 Office of the Chief Information Officer  
 Department of Health  
 Environment Department  
 Department of Transportation  
 Children, Youth & Families Department  
 General Services Department  
 New Mexico Commission of Public Records  
 Administrative Office of the Courts

### SUMMARY

#### Synopsis of Bill

Senate Bill 314 appropriates \$50 thousand from the general fund to a newly created electronic government fund to enact an electronic government act and create an electronic government

commission. The bill includes the following provisions:

- Establishes an electronic government and management structure to provide oversight, fiscal monitoring, strategic planning and policy development for the state's electronic government initiatives.
- Establishes an electronic government commission and lead agency.
- Establishes a basis for allocating revenues generated by electronic government initiatives.
- Promotes a mechanism for delivering information, government services and financial transactions to constituents, businesses and other government entities electronically.
- Develops an electronic government strategic plan for the state.

### Significant Issues

A few issues the electronic government commission will need to address include:

- **Lack of legislative appropriation process for electronic government fund.** The bill does not include provisions to ensure expenditures from the electronic government fund go through the legislative appropriation process. How will legislators be assured that development costs incurred by a vendor paid from an electronic government fund are managed in a cost-effective manner? Section 7, Paragraph A., establishes a fund with the state treasury to collect money from providing electronic services. This fund is to be administered by the electronic government commission and money in the fund is appropriated to the commission to carry out the administrative purposes of the act. Legislators may only receive financial cost information after expenditures have been committed.
- **Creation of another commission.** The bill establishes a commission separate from the information technology commission that is focused specifically on governance and management of electronic government. It is questionable whether there is a need for a separate commission, or whether these functions are more appropriately performed under the direction of the information technology commission.

According to the Environment Department, by establishing another commission, the bill conflicts with the explicit and implicit responsibilities of the Information Technology Commission (ITC) as set forth in the Information Technology Management Act. ITC commissioners have not been given the opportunity to read or comment on this bill or vote in its support. According to the Department of Health, there is no mechanism for approval of the commission's actions by the existing information technology commission. The membership of the commission is very similar to the information technology commission and to create another entity with the same membership seems redundant. The functions of the proposed commission should be assumed by the information technology commission.

- **Fiscal impact to constituents.** One concern by some legislators and citizens is that convenience fees add an additional burden to taxpayers. Some states, Arizona and Texas, only charge a convenience fee for items that are optional to taxpayers. For example, the state would not charge a convenience fee to obtain a business license to operate in the state nor for a constituent to view his/her personal information.

Discussions with stakeholders and sponsors of this bill indicate transaction fees to access and transact business with the state electronically, other than statutory fees currently de-

fined by law, will follow a tiered pricing structure. This structure has categorized potential consumers as follows; 1) Individuals, would not be charged additional fees to access their own personal information. 2) News publishers would be charged a minimal fee to access public records, similar to processes currently in place. 3) Local New Mexico businesses that utilize public information for their own use and do not resell this information to other entities would be charged a minimal transaction fee, similar to what these businesses currently pay today. 4) Businesses who resell public records to other businesses would pay a transaction fee based on an assessment of the market value for the information.

A related concern is that a self-funded approach will increase costs to businesses reliant on information and these costs will be passed on to their customers resulting in higher costs for such items as automobile insurance.

The Taxation and Revenue Department (TRD), Motor Vehicle Department (MVD) currently has negotiated contracts with two value-added resellers of MVD data,. These resellers deliver millions of motor vehicle records to hundreds of leading auto dealers, insurers, commercial fleet operators, and utilities in several states via the Internet. TRD currently provides resellers a complete copy of the MVD database on a recurring cycle for a modest fee. These resellers have voiced concern over any change to the current operating model because of the financial impact to their business and to their customers.

- **Sale of personal information.** Concerns exist around the sale and resale of personal information available through the open records act. For example, various businesses purchase motor vehicle records for resale to other businesses such as insurance agents and fleet operators. The electronic government commission will be responsible for adopting rules to address what information the state will make available electronically over the Internet and restrictions on the resale of personal information. The electronic government commission will be responsible for ensuring electronic government processes and procedures meet all state and federal privacy regulations.

According to the Department of Health, the bill does not mention applicable privacy laws such as HIPAA (Health Insurance Portability and Accountability Act), which governs access to protected health information, that restrict access to and protect the privacy of specific information records collected and managed by state agencies.

According to the Environment Department, the state cannot guarantee that the sale of its information, as identified and approved by the Electronic Government Commission and including personally-identifiable constituent data, will not be resold to third parties or used for illicit purposes. The Environment Department also identified several issues related to privacy including, NMSA 1978 14-3-15.1, which states “the use of state agency databases for commercial, political, or solicitation purposes is restricted”. Also, NMSA 1978 14.2.6, defines public records and ability to charge a fee for public records. Finally, NMAC 204.1.101(6) incorporates the “Freedom of Information Act of 1976” any sale of information held by state governments must comply with state and federal law.

- **Definition of Enterprise Agencies.** According to the Administrative Office of the Courts, the “Definitions” section defines “state agency” to mean any unit of state government or any of its political subdivisions. Sections 10A and 10B refer to “the commission on higher education, the judicial branch of government, the legislative branch of government and municipalities and counties,” stating that those entities are “encouraged to submit their electronic government plans and projects to the commission...,” and “it is

encouraged to coordinate their electronic government plans and projects with the executive branch....,” respectively. Perhaps the Definitions section should more clearly define “state agency” so that the act is binding only on executive agencies

## PERFORMANCE IMPLICATIONS

A digital infrastructure provides capabilities for substantially reducing the cost of government operations and increasing the number of constituents served. Metrics to measure these and other performance objectives should be gathered and reported to the legislature as part of information technology metrics published by the information technology commission.

According to the Department of Health, the bill could be beneficial to state government by establishing rules, guidelines and a state portal for state agencies.

According to the Office of the CIO, the bill should improve the state’s ability to serve their constituents securely and privately over the Internet and the state’s Intranet. The state portal should improve constituent convenience and access to government services 24/7 which may relieve staff from tedious and time-consuming administrative activities and make them available for mission critical work.

## ADMINISTRATIVE IMPLICATIONS

The bill establishes an electronic commission consisting of eleven voting members and ten non-voting members. The commission’s responsibilities include adopting rules for governing all aspects of delivering electronic government services. These responsibilities include the oversight and review of all finances of the electronic government fund. Other administrative implications include:

- **Lead agency.** The Governor will designate a lead agency for all electronic government activities to provide operational support of the technical infrastructure.

According to the Office of the CIO, the lead agency and agencies that actively participate in the executive management of the state’s portal initiatives may receive reimbursement for expenses submitted in a timely manner, approved by the commission and pending sufficient funds from portal revenue.

- **Electronic government fund.** A fund will be created in the state treasury to collect money from providing electronic services. The commission is responsible for administering the fund, including reviewing periodic financial reports and annual financial audit.
- **Agency participation.** According to the Department of Health, agencies may be requested to provide information regarding the types of electronic data that might be of interest to the public, businesses and other governments. This could be a significant effort within the Department of Health.

According to the Environment Department, staff and funding for staff will be necessary to support Electronic Government Commission activities. The bill is silent on which organization will staff the commission. If the intent of the bill is to have the Office of the Chief Information Officer (OCIO) staff this commission as it does the Information Technology Commission, additional OCIO staff may be necessary.

The Commission of Public Records indicated their office is responsible for administering the public records act and is concerned that the impact this bill will have on their respon-

sibilities is not clear.

## FISCAL IMPLICATIONS

The appropriation of \$50 thousand contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of Fiscal Year 2005 shall revert to the general fund.

Ongoing support of this program will be appropriated out of revenues from providing electronic services received into the electronic government fund administered by the commission.

The bill does not include provisions to ensure expenditures from the fund go through the legislative appropriation process. Rather in Section 7, Paragraph A., the bill states that money in the fund is appropriated to the commission to carry out the administrative purposes of the act.

According to the Office of the CIO, the sale of government data records and potential convenience fees should generate between \$3 million and \$7 million during the state portal's first year of operation. This is a conservative estimate. Subsequent years may generate significantly more revenue.

According to the Administrative Office of the Courts, as written, all judicial fees collected electronically would go to the electronic government fund and would not be available to the judiciary, since only those agencies involved in the executive management of the portal can use those fees. If the definition of "state agency" is amended to clarify that it does not include the judiciary, this concern would be addressed.

### Continuing Appropriations

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

## CONFLICTS, DUPLICATION

Senate Bill 314 is a duplicate of House Bill 291.

House Bill 2, General Appropriation Act provides \$150 thousand to develop a strategic plan for electronic government based on a self-funded model.

## TECHNICAL ISSUES

- **High-level architecture.** The state lacks a detailed working document that outlines very specifically the desired functionality, the underlying data sources (and agency participation) and the associated costs and benefits of an infrastructure for electronic government. This infrastructure is also referred to as a statewide portal.
- **Long-term funding.** A funding source is needed to build and maintain an infrastructure to support electronic government. One approach gaining acceptance is a "self-funded" model concept. This model relies upon high volume recurring transactions that citizens or businesses are willing to pay for on a per transaction basis. Fees derived from these transactions are utilized to pay for development costs to build, maintain and provide fu-

ture enhancements.

- **Fee structure.** Several types of fees are being collected nationwide through portals. Three distinct types of fees include a statutory fee, a transaction fee, and a convenience fee. A statutory fee is a state authorized fee such as permits and license fees. A transaction fee can either be an add-on fee paid by the constituent or business, or deducted from the statutory fee; in effect the state agency receives less than the full statutory fee. A convenience fee is an add-on non-state authorized fee for transactions not required for a business to operate within the state. A self-funded model collects both transaction fees and convenience fees into a fund established to pay for infrastructure development.

## ALTERNATIVES

According to the Office of the CIO, SB 314 is the most cost effective, efficient approach for the state to pursue electronic government.

According to the Department of Health, the Environment Department and the Children, Youth and Families Department, an alternative solution would be to designate the IT Commission as the responsible authority for the establishment of electronic government and a management structure.

According to the Administrative Office of the Courts, the bill could be tailored to the management of the state's portal. A task force could be formed to work with the Commission on Public Records and the Information Technology Commission to develop appropriate oversight

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